

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application	)	FINAL ORDER APPROVING
T-10533, Marion County	)	CHANGES IN CHARACTER OF USE,
	)	PLACE OF USE AND POINT OF
	)	APPROPRIATION

**Authority**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

THOMAS H. DEARMOND  
11463 BROADACRES ROAD NE  
HUBBARD, OR 97032

**Agent**

DON KNAUER  
PO BOX 5416  
SALEM, OR 97304

**Findings of Fact**

**Background**

1. On February 12, 2008 Thomas DeArmond filed an application to change the use, place of use, and point of appropriation under Certificate 44644. The Department assigned the application number T-10533. Transfer Applications T-10532, T-10533, T-10535 and Ground Water Registration Modification Application T-10534 were filed at the same time, are interrelated, and will be processed concurrently.
2. The portion of the right to be transferred is as follows:  
**Certificate:** 44644 in the name of PIONEER TRUST COMPANY/JOHN HOOPER (perfected under Permit G-5281)  
**Use:** IRRIGATION of 14.2 ACRES and SUPPLEMENTAL IRRIGATION of 25.6 ACRES  
**Priority Date:** OCTOBER 5, 1970  
**Rate:** 0.494 CUBIC FOOT PER SECOND (CFS)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year  
**Source:** A WELL in the PUDDING RIVER BASIN

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
5 S	2 W	WM	12	SE SW	98	1540 FEET NORTH AND 1070 FEET EAST FROM THE SOUTHWEST CORNER OF DLC 98

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Type of Change Proposed
5 S	2 W	WM	12	SW SW	98	4.40	USE, POU & POA
5 S	2 W	WM	13	NE NW	98	4.30	USE, POU & POA
5 S	2 W	WM	13	NW NW	98	5.50	USE, POU & POA
<b>TOTAL:</b>						<b>14.2</b>	

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Type of Change Proposed
5 S	2 W	WM	12	SE SW	98	12.10	POU & POA
5 S	2 W	WM	13	NE NW	98	13.50	POU & POA
<b>TOTAL:</b>						<b>25.6</b>	

- Transfer Application T-10533 proposes to change the character of use of the primary portion of the irrigation right described in Finding #2 above (14.2 acres, 0.176 cfs, limited to a duty of 35.5 acre-feet per year) to NURSERY USE.
- Transfer Application T-10533 also proposes to change the place of use of the 14.2 acres of primary right (transferred to nursery use in Finding #3 above) and the 25.6 acres of supplemental irrigation right as follows:

**Proposed Place of Use:**

TRACT 1 – NURSERY USE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4S	1W	WM	29	NE SW	N/A	2.30
4S	1W	WM	29	NW SW	N/A	11.90
<b>TOTAL:</b>						<b>14.2</b>

TRACT 2 - SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4S	1W	WM	32	NW NE	56	5.30
4S	1W	WM	32	SW NE	56	20.30
<b>TOTAL:</b>						<b>25.6</b>

- The lands to which the primary irrigation portion of the right is proposed to be moved have an existing right under Certificate 83086, also proposed to be changed to nursery use under T-10535, which is being processed concurrently with T-10533. This would result in stacked nursery rights with a total duty of 5.0 acre-feet per acre (2.5 acre-feet per acre from each right). There is no change in character of use proposed for the supplemental irrigation portion of the right.

6. Additionally, Transfer Application T-10533 proposes to replace the authorized point of appropriation (POA) with 7 new points of appropriation (existing wells) located approximately 3.5 miles northeast from the authorized POA. Specifically, the transfer calls for a change in the POA for 0.176 cfs to one group of 3 wells for use on the lands in Tract 1 (14.2 acres) and a change in the POA for 0.318 cfs to another group of 4 wells for use on the lands in Tract 2 (25.6 acres), as follows:

**Proposed Points of Appropriation:**

Tract 1						
Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4S	1W	WM	30	SE SE	59	Well #OWRE 2: 1000 FEET NORTH AND 50 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 30
4S	1W	WM	31	NE NE	59	Well #OWRE 1: 607 FEET NORTH AND 812 FEET WEST FROM THE SOUTHEAST CORNER OF DLC 59
4S	1W	WM	31	NE NE	59	Well #OWRE 3: 220 FEET NORTH AND 400 FEET WEST FROM THE SOUTHEAST CORNER OF DLC 59

Tract 2						
Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4S	1W	WM	32	SE NW	56	Well #1: 60 FEET NORTH AND 1950 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 32
4S	1W	WM	32	SE NW	56	Well #2: 980 FEET NORTH AND 1650 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 32
4S	1W	WM	32	NE NW	56	Well #8: 1380 FEET NORTH AND 920 FEET WEST FROM THE CENTER OF SECTION 32
4S	1W	WM	32	SE NE	56	Well #9: 540 FEET SOUTH AND 860 FEET WEST FROM THE NORTHEAST CORNER OF DLC 56

7. Notice of the application for transfer was published on February 19, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On June 11, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10533 to the applicant and his agent. The draft Preliminary Determination set forth a deadline of July 14, 2008, for the applicant to respond. On July 2, 2008, the applicant's agent requested additional time to respond and submit the required reports of ownership and lien information. The request for additional time was granted by the Department.
9. On August 26, 2008, the applicant's agent submitted reports of ownership and lien information for the subject lands, which were prepared as of the dates the various conveyance deeds and agreements submitted with the application were signed. The Department's review of the ownership and lien reports confirmed that the conveying parties

involved were owners of the land at the time the conveyance documents were signed. However, copies of most of those conveyance documents did not indicate that they had been properly recorded in the county deed records. The subject lands, formerly known as Lots 1 and 2 of Town Center at Woodburn, Marion County, Oregon, Plat 45-72, were subsequently subdivided into 127 individual lots.

10. To ensure sufficient notice was provided to any subsequent purchasers of property located within the aforementioned former Lots 1 and 2, the Department researched the Marion County Assessor's property records on November 4, 2008, and determined that current ownership for the lands in question is as follows: Lots 1 through 39, inclusive Tracts A and B, Evergreen Meadows in the City of Woodburn, Marion County, Oregon, Plat 46-43 (*formerly known as Lot 1 of Town Center at Woodburn, Marion County, Oregon, Plat 45-72*) are all owned by K & R Holdings, Evergreen Meadows, LLC; and Lots 147 through 234, inclusive, Montebello 3 in the City of Woodburn, Marion County, Oregon, Plat 46-72 (*formerly known as Lot 2 of Town Center at Woodburn, Marion County, Oregon, Plat 45-72*) are all owned by Montebello Estates I, LLC. The Department's research confirmed there are no subsequent owners that were not noticed.
11. On December 3, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10533 and mailed a copy to the applicant and his agent. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 9, 2008, and in the *Woodburn Independent* newspaper on December 24 and 31, 2008, and January 7, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

#### ***Transfer Review Criteria (OAR 690-380-4010)***

12. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10533.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

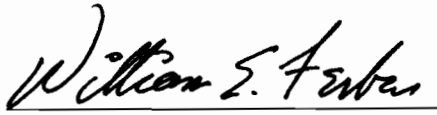
#### **Conclusions of Law**

The changes in character of use, place of use, and point of appropriation proposed in Transfer Application T-10533 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The changes in character of use, place of use, and point of appropriation proposed in Transfer Application T-10533 are approved.
2. Water right certificate 44644 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 44644 and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
5. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
6. That portion of the right changed to nursery use (14.2 acres) shall be further limited to a rate of 0.176 cfs, 2.5 acre-feet per acre (a total of 35.5 acre-feet), over the course of the authorized season of use.
7. The former place of use of the portion of the right subject to transfer shall no longer receive water under the right.
8. Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 10<sup>th</sup> day of February 2009

  
Phillip C. Ward, Director

Mailing date: FEB 18 2009